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OFFICE OF PETITIONS

In re Application of :
Christoph Raber :
Application No. 10/040,771 : DECISION ON PETITION
Filed: January 9, 2002 :
Attorney Docket No. 0756 C PCT Cont. US :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed September 9, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/DE00/02275, filed July 7, 2000, set forth in the amendment previously filed on May 30, 2003.

On July 25, 2003, applicant filed a petition under 37 CFR 1.78(a)(3). However, the petition was dismissed in a decision mailed on August 9, 2004, because petitioner did not pay the petition fee in full. Consideration of the renewed petition follows.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, prior-filed PCT application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed PCT application has been included in an amendment to the first sentence of the specification following the title¹, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is

¹ It is noted that the amendment filed May 30, 2003 includes a reference to prior filed foreign applications. However, the reference to the foreign applications is more appropriately made in the oath or declaration or an application data sheet, and not in the first line of the specification following the title.


entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

Petitioner paid a petition fee in the amount of \$1,280 on July 25, 2003. The \$50 balance due has been charged to Deposit Account No. 11-1545, as authorized.

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at 571-272-3207. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to the examiner of Technology Center Art Unit 3681 for appropriate action on the amendment filed July 25, 2003, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application.


Frances Hicks
Petitions Examiner
Office of Petitions

Enc: Corrected Filing Receipt (3 pages)